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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,327	03/10/2006	Ola Fagrell	12466	1586

25570 7590 11/18/2008  
ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.  
Intellectual Property Department  
P.O. Box 10064  
MCLEAN, VA 22102-8064

EXAMINER
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GRAY, JILL M

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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11/18/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lgallaugh@rmsclaw.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/538,327	<b>Applicant(s)</b> FAGRELL ET AL.	
	<b>Examiner</b> Jill Gray	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Publication EP 0961,295 A1 (Cogan) in view of DeNicola, Jr. 5,047,446, for reasons of record.
3. Claims 1-4 and 7-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Publication EP 0961,295 A1 (Cogan) in view of DeNicola, Jr. 5,047,446.

Cogan teaches a coaxial cable comprising a dielectric layer that can be propylene homo- or copolymer, but is silent as to the propylene having strain hardening behavior.

DeNicola discloses propylene having strain hardening behavior which can be used as wire and cable coating, wherein said propylene can be blended with other propylene homo or copolymer materials or ethylene homo- or copolymers, as required by claims 1 and 2. See entire document, and for example, column 9, lines 5-29.

It would have been obvious to one having ordinary skill in the art to use as the dielectric layer of Cogan, a propylene homo or copolymer as taught by DeNicola with the reasonable expectation of success of obtaining a dielectric layer having a more uniform cell size when foamed. Regarding claims 3 and 4, it would have been obvious to the skilled artisan during routine experimentation to purify the propylene polymer to

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remove entrained catalyst. Accordingly, the limitations of present claims 3 and 4 are not construed to be a matter of invention in the absence of factual evidence of unexpected or superior properties of the resultant cable, whereby said properties are directly related to the claimed critical catalyst residue. Regarding properties such as the strain hardening behavior and melt flow rate, the copolymer of the prior art is substantially similar to that contemplated by applicants. Therefore, the examiner has reason to believe that the prior art copolymer results in properties that are substantially the same as and render obvious those of the instant invention, in the absence of factual evidence to the contrary. Applicants are invited to provide such evidence.

Therefore, the combined teachings of Cogan and DeNicola would have rendered obvious the invention as claimed in present claims 1-4 and 7-10 and 12.

4. Claim 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Publication EP 0961,295 A1 (Cogan) in view of DeNicola, Jr.

5,047,446, as applied above to claims 1-4 and 7-10, further in view of European Patent Publication EP 0634,454 A1 (Comer).

Cogan and DeNicola are as set forth above. Though DeNicola teaches that his propylene can be mixed with other propylene or ethylene homo or copolymers, he is silent as to the specific amounts. Comer teaches a polyolefin composition comprising a propylene polymer having strain hardening behavior present in an amount of from 5 to 95% by weight and a non-strain hardening behavior propylene polymer present in an amount of from 95 to 5% by weight having improved thermoformability. Comer teaches that compositions containing strain hardening behavior propylene and at least 50 wt% of

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a non-strain hardening behavior propylene are known in the art. It would have been obvious to one having ordinary skill in the art to form a blend of a strain hardening propylene and a non-strain hardening propylene as taught by DeNicola, wherein the non-strain hardening propylene is present in an amount of at least 50 wt% as taught by Comer to achieve the predictable results of obtaining a polymer having good mechanical properties and thermoformability. As to the ratio of components, since the result sought and the ingredients used were known, it was within the expected skill of one having ordinary skill in this art to arrive at the optimum proportion of those ingredients, during routine experimentation.

Therefore, the combined teachings of Cogan, DeNicola, and Comer would have rendered obvious the invention as claimed in present claim 5.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding claims 8-10, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Response to Arguments***

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8. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill Gray whose telephone number is 571-272-1524.

The examiner can normally be reached on M-Th and alternate Fridays 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner  
Art Unit 1794

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